

**Representative Andrew Stoddard** proposes the following substitute bill:

**POST CERTIFICATION AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill adds additional grounds for taking action in relation to peace officer misconduct.

**Highlighted Provisions:**

This bill:

► adds the following grounds to the council's authority to issue a Letter of Caution or suspend or revoke the certification of a peace officer:

- conduct involving dishonesty or deception;
  - certain violations of law or the employer's use of force policy; or
  - an open federal civil rights investigation for certain conduct;
- modifies the circumstances under which the council may issue discipline; and
- modifies when separations from an employer must be reported to the division.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



26           **53-6-211**, as last amended by Laws of Utah 2020, Chapter 35

27  
28       *Be it enacted by the Legislature of the state of Utah:*

29           Section 1. Section **53-6-211** is amended to read:

30           **53-6-211. Suspension or revocation of certification -- Right to a hearing --**  
31 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

32           (1) The council has the authority to issue a Letter of Caution, or suspend or revoke the  
33 certification of a peace officer, if the peace officer:

34           (a) willfully falsifies any information to obtain certification;

35           (b) has any physical or mental disability affecting the peace officer's ability to perform  
36 duties;

37           (c) is addicted to alcohol or any controlled substance, unless the peace officer reports  
38 the addiction to the employer and to the director as part of a departmental early intervention  
39 process;

40           (d) engages in conduct constituting a state or federal criminal offense, but not including  
41 a traffic offense that is a class C misdemeanor or infraction;

42           (e) refuses to respond, or fails to respond truthfully, to questions after having been  
43 issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);

44           (f) engages in sexual conduct while on duty; ~~[or]~~

45           (g) is certified as a law enforcement peace officer, as defined in Section **53-13-102**, and  
46 is unable to possess a firearm under state or federal law~~[-]~~;

47           (h) is found by a court or by a law enforcement agency to have knowingly engaged in  
48 conduct that involves dishonesty or deception in violation of a policy of the peace officer's  
49 employer or in violation of a state or federal law;

50           (i) intentionally engages in an excessive or unreasonable use of force that is found by a  
51 court or by a law enforcement agency to violate;

52           (i) a use of force policy of the peace officer's employer; or

53           (ii) a state or federal law in the course of the peace officer's performance of official  
54 duties; or

55           (j) is the subject of an open federal civil rights investigation for engaging in biased or  
56 prejudicial conduct against one or more individuals based on the individual's race, color, sex,

57 pregnancy, age, religion, national origin, disability, sexual orientation, or gender identity.

58 (2) The council may not issue a Letter of Caution[;] or suspend or revoke the  
59 certification of a peace officer for a violation of state or federal law or a violation of a law  
60 enforcement agency's policies, general orders, or guidelines of operation that do not amount to  
61 a cause of action under Subsection (1).

62 (3) (a) The division is responsible for investigating officers who are alleged to have  
63 engaged in conduct in violation of Subsection (1).

64 (b) The division shall initiate all adjudicative proceedings under this section by  
65 providing to the peace officer involved notice and an opportunity for a hearing before an  
66 administrative law judge.

67 (c) All adjudicative proceedings under this section are civil actions, notwithstanding  
68 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted  
69 criminally.

70 (d) (i) The burden of proof on the division in an adjudicative proceeding under this  
71 section is by clear and convincing evidence.

72 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of  
73 proof to establish the affirmative defense by a preponderance of the evidence.

74 (e) If the administrative law judge issues findings of fact and conclusions of law stating  
75 there is sufficient evidence to demonstrate that the officer engaged in conduct that is in  
76 violation of Subsection (1), the division shall present the finding and conclusions issued by the  
77 administrative law judge to the council.

78 (f) The division shall notify the chief, sheriff, or administrative officer of the police  
79 agency which employs the involved peace officer of the investigation and shall provide any  
80 information or comments concerning the peace officer received from that agency regarding the  
81 peace officer to the council before a Letter of Caution is issued, or a peace officer's certification  
82 may be suspended or revoked.

83 (g) If the administrative law judge finds that there is insufficient evidence to  
84 demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall  
85 dismiss the adjudicative proceeding.

86 (4) (a) The council shall:

87 (i) accept the administrative law judge's findings of fact and conclusions of law, and

the information concerning the peace officer provided by the officer's employing agency; and  
 (ii) choose whether to issue a Letter of Caution[;] or suspend or revoke the officer's certification.

(b) Before making a decision, the council may consider aggravating and mitigating circumstances.

(c) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:

(i) has a personal bias for or against the officer;

(ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or

(iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

(5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(6) (a) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of ~~[an]~~ a credible allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

(b) If a peace officer who is the subject of ~~[an internal or administrative investigation into allegations that include]~~ a credible allegation that includes any of the conditions or circumstances outlined in Subsection (1) resigns, retires, or otherwise separates from the investigating law enforcement agency before the conclusion of the investigation, the chief, sheriff, or administrative officer of that law enforcement agency shall report the allegations and any investigation results to the division.

(7) The council's issuance of a Letter of Caution[;] or suspension or revocation of an officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4,

119 Judicial Review.